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ARIZONA CORPORATION COMMISSION  
WATER CONTROL

COMMISSIONERS

BOB STUMP – Chairman  
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BOB BURNS  
SUSAN BITTER SMITH

**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE APPLICATION  
OF MONTEZUMA RIMROCK WATER  
COMPANY, LLC FOR APPROVAL OF  
FINANCING TO INSTALL A WATER LINE  
FROM THE WELL ON TIEMAN TO WELL  
NO. 1 ON TOWERS.

Docket No. W-04254A-12-0204

IN THE MATTER OF THE APPLICATION  
OF MONTEZUMA RIMROCK WATER  
COMPANY, LLC FOR APPROVAL OF  
FINANCING TO PURCHASE THE WELL  
NO. 4 SITE AND THE COMPANY  
VEHICLE.

Docket No. W-04254A-12-0205

IN THE MATTER OF THE APPLICATION  
OF MONTEZUMA RIMROCK WATER  
COMPANY, LLC FOR APPROVAL OF  
FINANCING FOR AN 8,000-GALLON  
HYDRO-PNEUMATIC TANK.

Docket No. W-04254A-12-0206

IN THE MATTER OF THE RATE  
APPLICATION OF MONTEZUMA  
RIMROCK WATER COMPANY, LLC.

Docket No. W-04254A-12-0207

JOHN E. DOUGHERTY,  
  
COMPLAINANT,

DOCKET NO. W-04254A-11-0323

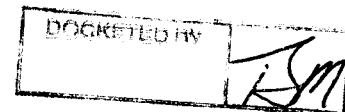
V.

MONTEZUMA RIMROCK WATER  
COMPANY, LLC

RESPONDENT

Arizona Corporation Commission  
**DOCKETED**

MAR 18 2013



1 IN THE MATTER OF THE APPLICATION  
2 OF MONTEZUMA RIMROCK WATER  
3 COMPANY, LLC FOR APPROVAL OF A  
4 RATE INCREASE.

DOCKET NO. W-04254A-08-0361

4 IN THE MATTER OF THE APPLICATION  
5 OF MONTEZUMA RIMROCK WATER  
6 COMPANY, LLC FOR APPROVAL OF A  
7 FINANCING APPLICATION.

DOCKET NO. W-04254A-08-0362

**ANSWER TO AMENDED  
FORMAL COMPLAINT**

8 Montezuma Rimrock Water Company LLC ("MRWC" or "Company") hereby  
9 answers the Amended Formal Complaint and Motion Add Allegation XVII filed by Mr.  
10 Dougherty on February 27, 2013 ("Amended Complaint"). The Company responds and  
11 addresses each allegation asserted by Mr. Dougherty in the Amended Complaint, the  
12 original complaint filed on August 23, 2011, the Motion to Modify Formal Complaint  
13 with Additional Allegation XV filed on September 13, 2011, the Motion to Modify  
14 Formal Complaint with Allegation XVI filed on September 23, 2011 and the Motion to  
15 Add Allegation XVII filed on February 12, 2013.

16 In the first 13 numbered paragraphs of the Amended Complaint, Mr. Dougherty  
17 does not assert any factual allegations against the Company. Rather, Mr. Dougherty  
18 offers his interpretations of the Company's Answer to Complaint filed on September 30,  
19 2011. In response to those paragraphs, the Company alleges that its September 30, 2011  
20 Answer speaks for itself.

21 In numbered paragraph 15 of the Amended Complaint, Mr. Dougherty states that  
22 "Complainant hereby withdraws Allegations III, V, VI and XVI from the Formal  
23 Complaint without prejudice."<sup>1</sup> As such, Allegations III, V, VI and XVI are no longer at  
24 issue in this proceeding and should be dismissed.

25 In numbered paragraph 16 of the Amended Complaint, Mr. Dougherty states that  
26 "Complainant hereby withdraws Allegations VII, IX, XIII, XIV with prejudice."<sup>2</sup> As such,

<sup>1</sup> Amended Complaint at 2, ¶ 15.

<sup>2</sup> Amended Complaint at 2, ¶ 16.

1 Allegations VII, IX, XIII and XIV are no longer at issue in this proceeding and should be  
2 dismissed with prejudice.

3 By process of elimination, the following allegations remain at issue in this docket:  
4 Allegations I, II, IV, VII, VIII, X, XI, XII, XV and XVII. The Company responds to  
5 each of those issues below.

6 1. **Allegation I.** For Allegation I, Mr. Dougherty alleges that “the Company  
7 did not seek or obtain Commission approval to enter into a long-term, \$32,000 debt in  
8 2005 to acquire property for Well No. 4 in violation of ARS S40-30 and ARS S40-302.”<sup>3</sup>  
9 Mr. Dougherty further alleges that “the Company has willfully encumbered or spent  
10 ratepayer funds to pay for the undisclosed loan from 2005 through 2011 in violation of  
11 ARS S40-423 and ARS S40-424.”<sup>4</sup> The Company denies these allegations contained in  
12 the Amended Complaint.

13 In 2005, the Company agreed to purchase Lot 500 in Lake Montezuma Estates,  
14 Unit Two, for \$35,000 from property owner Anna Barbara Brunner as the proposed site  
15 for location of Well No. 4. The Company made a down payment of \$3,000 and the  
16 property transfer was subject to the Company’s payment of \$32,000 for the property. On  
17 or about November 16, 2005, Ms. Brunner recorded a Warranty Deed to Montezuma  
18 Rimrock Water Co, LLC conveying Lot 500 in Lake Montezuma Estates, Unit Two  
19 (Yavapai County Recorder No. B-4335 P-428) to the Company. As part of the purchase  
20 agreement, the parties also recorded a Deed of Trust and Assignment of Rents with the  
21 Yavapai County Recorder (Recorder No. B-4335 P-429) by which the Company as  
22 Trustor conveyed the property in trust to Yavapai Title Agency as Trustee and Ms.  
23 Brunner as beneficiary as security for payment of the remaining \$32,000 purchase price.

24  
25  
26 <sup>3</sup> Amended Complaint at 3, ¶ 18.

<sup>4</sup> *Id.*

1           Mr. Dougherty claims that the Company “willfully encumbered or spent ratepayer  
2 funds to pay for the undisclosed loan from 2005 through 2011.” In this case, that claim is  
3 not actionable in a complaint proceeding before the Commission for several reasons.  
4 First and foremost, there are no ratepayer funds at issue. The Company is a private water  
5 utility and ratepayers do not possess any ownership interest in any Company funds or  
6 property. As the United States Supreme Court has explained, “[c]ustomers pay for  
7 service, not for the property used to render it....By paying bills for service they do not  
8 acquire any interest, legal or equitable, in the property used for their convenience or in the  
9 funds of the company. Property purchased out of moneys received for service belongs to  
10 the company just as does that purchased out of proceeds of its bonds and stock.”<sup>5</sup>

11           Second, the purchase price for the subject property has been paid in full and there  
12 is not any outstanding long-term debt or encumbrances against utility property from this  
13 transaction. On August 22, 2011, Yavapai Title Agency recorded a Deed of Release and  
14 Full Reconveyance with the Yavapai County Recorder (Recorder No. B:4829, P:739)  
15 releasing all rights to the property and reconveying the property to the Company. As a  
16 result, the Company is the owner of the property, there is no existing long-term debt  
17 relating to that property and there are no Company funds at issue. Under these  
18 circumstances, any alleged violation of Commission statutes relating to the property did  
19 not result in any harm to the Company or its ratepayers.

20           Third and finally, it should be noted that Mr. Dougherty apparently has taken the  
21 position that Well No. 4 should not be included in the Company’s rate case because that  
22 well is not currently being used by the Company in providing utility service. If true, the  
23 Deed of Trust for the property did not encumber any utility property used and useful in  
24 providing utility service to customers. As a matter of law, Allegation I should be  
25 dismissed.

26           <sup>5</sup> *Bd. of Pub. Utility Comm’rs v. New York Tele. Co.*, 271 U.S. 23, 32 (1926).

1           2.     **Allegation II.** In Allegation II, Mr. Dougherty claims that the “Company  
2 did not disclose material financial information to Commission staff during a 2009 audit –  
3 a \$32,000 long-term debt – that was used to calculate a permanent rate increase and  
4 whether the company could qualify for a \$165,000 WIFA loan. ... The failure to disclose  
5 the debt to staff when the Company submitted its 2007 annual report is a violation [of]  
6 ARS S40-301, ARS S40-302, R14-2-411(D)(1,2) and Commission Order 67583.”<sup>6</sup> The  
7 Company denies the claims and allegations set forth in Allegation II of the Amended  
8 Complaint and incorporates the responses noted above. Further, Mr. Dougherty does not  
9 have any standing to assert any actionable claims relating to Commission’s Staff’s 2009  
10 audit. Commission Staff has not raised any issues relating to that 2009 audit. The  
11 Company did not violate A.A.C. R14-2-411(D)(1,2) and the Company did not violate  
12 Decision No. 67583.

13           3.     **Allegation IV.** In Allegation IV of the original Complaint, Mr. Dougherty  
14 alleged that the “Company improperly includes Well No. 4, DWR 55-213141, as part of  
15 its “Water Company Plant Description” in its Annual Reports in 2007, 2008, 2009 and  
16 2010. Well No. 4 has never been approved for operation by Yavapai County and the  
17 Company does not have a ‘Certificate of Compliance’ to operate the well because it was  
18 built in violation of the Yavapai County Water Code and encroaches on neighboring  
19 property rights.”<sup>7</sup> The Company denies that the allegations contained in Allegation IV  
20 warrant any complaint against MRWC.

21           Although the Company currently does not have County approval for operation of  
22 the well, the Company is in the process of resolving those issues through condemnation  
23 proceedings to obtain encroachment rights and then the Company will undertake permit  
24 proceedings with Yavapai County. Well No. 4 is not currently being used by the  
25

26           <sup>6</sup> Amended Complaint at 2, ¶ 19.

<sup>7</sup> Original Complaint at 3-4, ¶ IV.

1 Company. Allegation IV is not an actionable complaint item and does not state or justify  
2 any action against the Company. Further, those allegations did not harm any customers of  
3 the Company. To the extent the zoning and permit issues surrounding Well No. 4 are not  
4 resolved by the time of the rate case hearing and the Company is not using Well No. 4 in  
5 providing utility service to customers, then the Commission likely will exclude Well No.  
6 4 from rate base or consideration of rates in this docket.<sup>8</sup>

7 4. **Allegation VII.** In Allegation VII, Mr. Dougherty alleges that the  
8 “Company is in violation of state and federal safe water standards and is operating under  
9 an Arizona Department of Environmental Quality (ADEQ) Consent Order (since June  
10 2010) requiring customers to make an appointment to obtain bottled water from the  
11 company’s office.”<sup>9</sup> The Company admits that it is operating under an ADEQ Consent  
12 Order. The Company denies that it is currently violating any safe drinking water  
13 standards for arsenic. ADEQ issued an Approval of Construction Partial Approval on  
14 November 21, 2012 authorizing the Company to begin operation of the Arsenic Treatment  
15 Facility. The Company is currently operating the Arsenic Treatment Facility through use  
16 of Well No. 1 and has complied with applicable arsenic standards for drinking water.  
17 The Company received Drinking Water Inorganic Chemical Analysis Reports from  
18 ADEQ for water samples taken on November 29-30, 2012 and December 1-2, 2012, with  
19 arsenic results reported well below the MCL of 0.01 for arsenic. The Company provided  
20 those test results to Commission Staff on December 13, 2012. Under these circumstances,  
21 Allegation VII should be dismissed as a matter of law and fact.

22 Further, Mr. Dougherty does not have standing to assert the issues raised in  
23 Allegation VII. Mr. Dougherty is not a current customer of the Company and Mr.

24 \_\_\_\_\_  
25 <sup>8</sup> In that event, once the County zoning issues and condemnation proceedings are concluded, the  
26 Company would seek to include Well No. 4 and all of its costs as post-test plant in this rate case  
or in the next rate case filed by the Company.

<sup>9</sup> Original Complaint at 3, ¶ VII.

1 Dougherty has undertaken a number of actions in an effort to prevent the Company from  
2 constructing and operating an arsenic treatment facility, including this Complaint  
3 proceeding, motions to prevent construction of the Arsenic Treatment Plant and filing of  
4 complaints and objections with Yavapai County and ADEQ. Even further, Mr. Dougherty  
5 filed objections with WIFA relating to potential financing for the Arsenic Treatment  
6 Facility. Mr. Dougherty's actions have jeopardized the interests of MRWC customers  
7 and, to say the least, Mr. Dougherty has unclean hands on these issues and should not be  
8 allowed to complain about the Company's arsenic levels in light of his efforts to oppose  
9 the Company's actions to address the arsenic issues.

10 5. **Allegation VIII.** In Allegation VIII, Mr. Dougherty alleges that the  
11 "Company is in violation of Decision No. 71317 in Docket W-04254-09-0361, 0362 since  
12 December 31, 2009 by failing to obtain an ADEQ Certificate of Approval for Well No.  
13 4."<sup>10</sup> In Docket Nos. W-04254-08-0361 and -0362, Staff recommended that the  
14 Company be required to file an Approval of Construction (AOC) for the arsenic treatment  
15 plant to be funded by the WIFA loan and an AOC for the new Well No. 4.

16 The Company acknowledges that it does not have an AOC for Well No. 4, but the  
17 Company is undertaking all reasonable efforts to obtain ADEQ and County approvals for  
18 Well No. 4. Well No. 4 is not currently being used by the Company and the Company's  
19 failure to obtain an AOC for Well No. 4 did not harm any customers of the Company and  
20 does not justify any complaint action against the Company. Further, MRWC received an  
21 extension from ADEQ for the AOC until October 2013.

22 Again, Mr. Dougherty is not a current customer of the Company and Mr.  
23 Dougherty has undertaken a number of actions in an effort to prevent the Company from  
24 constructing and operating Well No. 4. Mr. Dougherty's actions have jeopardized the  
25

26 <sup>10</sup> Amended Complaint at 3, ¶ 20.

1 interests of the Company, existing and future MRWC customers and, to say the least, Mr.  
2 Dougherty has unclean hands on these issues.

3 6. **Allegation X.** In Allegation X, Mr. Dougherty alleges that the “Company  
4 provided incomplete and misleading statements to Commission investigators in January  
5 2010 concerning its Yavapai County zoning issues related to Well No. 4. The  
6 Company’s incomplete and misleading statements to ACC investigators is [sic] a violation  
7 of R14-2-411.” The Company denies Allegation X.

8 On this claim, Mr. Dougherty does not state with any specificity what statements  
9 were made by the Company. Further, Mr. Dougherty does not have any standing or  
10 personal interests subject to a complaint proceeding relating to statements made to ACC  
11 Staff. Commission Staff has not filed any complaint or taken any action against the  
12 Company relating to any such statements. On these facts, Allegation X does not raise any  
13 actionable claim for violations of A.A.C. R14-2-411 Further, A.A.C. R14-2-411  
14 addresses administrative and hearing requirements relating to customer service complaints  
15 and other administrative issues. Mr. Dougherty is not a customer of the Company.

16 7. **Allegation XI.** In Allegation XI, Mr. Dougherty alleges that the “Company  
17 improperly billed and collected an ‘arsenic surcharge in December 2009 in violation of  
18 Commission Decision No. 71317.”<sup>11</sup> The Company acknowledges that the arsenic  
19 surcharge was improperly invoiced in December 2009.

20 8. **Allegation XII.** In Allegation XII, Mr. Dougherty alleges that the  
21 “Company improperly billed and collected an ‘arsenic surcharge in April 2011 in  
22 violation of Commission Decision No. 71317.”<sup>12</sup> The Company acknowledges that the  
23 arsenic surcharge was improperly invoiced April 2011 and further alleges that the  
24 Company fully refunded such surcharges to customers.

25 <sup>11</sup> Original Complaint at 3, ¶ XI.

26 <sup>12</sup> Original Complaint at 3, ¶ XII.



1           9.     **Allegation XV.** In Allegation XV, Mr. Dougherty alleges that the  
2     “Company failed to immediately report to the Commission that [the] Company’s records  
3     had been stolen during a series of burglaries that allegedly began in October 2009 and  
4     continued into 2010. Despite the serious impact to the Company from records being  
5     stolen, the Company failed to notify the police and make formal reports of the thefts.” On  
6     this claim, the Company does not have any obligation to report such burglaries to the  
7     Commission or the police as alleged by Mr. Dougherty in this allegation. The Company’s  
8     failure to report such incidents to the Commission or the police is not an actionable  
9     complaint item and the Company did not violate any Commission statutes, rules or  
10    regulations or Decision No. 67583 as alleged by Mr. Dougherty. Even further, the  
11    Company is not at fault for the illegal and harmful conduct of third persons responsible  
12    for such incidents.

13           10.    **Allegation XVII.** In Allegation XVII, Mr. Dougherty asserts a variety of  
14    claims relating to the lease agreements for the arsenic treatment facility. The Company  
15    denies all of the claims contained in Allegation XVII of the Amended Complaint.

16           (a)    To start, Mr. Dougherty claims that “Montezuma knowingly and willfully  
17    violated the January 4, 2012, March 12, 2012 and April 9, 2012 Procedural Orders in  
18    Docket W-2454A-08-0361, W-4254A-08-0362 by failing to docket a March 22, 2012  
19    Capital Lease agreement between Montezuma and Nile River Leasing, LLC for an arsenic  
20    treatment building. Instead, the Company docketed a purported March 16, 2012 lease  
21    agreement between Ms. Patricia Olsen, personally, and Nile River leasing for the building.  
22    This action was undertaken to circumvent Commission approval of capital leases in  
23    violation of ARS S40-301, ARS S40-301, ARSS40-424 and ARS S40-425.”<sup>13</sup>

24           On these issues, Ms. Olsen originally executed a lease agreement personally with  
25    Nile River Leasing for the arsenic treatment building on March 16, 2012. The Company

26           <sup>13</sup> Amended Complaint at 4-5, ¶ 27(A-E).

1 docketed that agreement in case no. 08-0361 on April 13, 2012. At that time, the  
2 Company believed that the agreement had been properly executed by Nile River Leasing.  
3 MRWC received a copy of that Nile River lease agreement in the mail and there is  
4 nothing illegal or improper with Ms. Olsen executing that lease agreement personally.

5 During that time, the Company also received a copy of the lease agreement  
6 between Nile River and the Company and the Company executed a Terms and Conditions  
7 of Lease Agreement with Nile River Leasing on March 22, 2012. Eventually, funding  
8 was not approved for the March 16 lease agreement so the parties used the March 22,  
9 2012 agreement as the final agreement between the parties.

10 The Company acknowledges that it should have advised the Commission and ALJ  
11 of the new lease agreement. On that note, however, the Company also believes that  
12 Commission approval is not required for the March 22 lease agreement with Nile River  
13 because it is not a capital lease. That lease agreement is for the arsenic treatment facility  
14 building. The lease does not convey ownership of the building to MRWC at the end of  
15 the lease term, the lease does not give MRWC the right to purchase the building at a  
16 bargain price at the end of the lease term and the term of the lease (36 months) is not 75%  
17 or more of the economic life of the asset.<sup>14</sup> At this juncture, the Company cannot  
18 determine whether the present value of the rents, using the Company's incremental  
19 borrowing rate, is 90% or more of the fair market value of the building.

20 Aside from these issues, the Company also believes that the March 22 lease  
21 agreement was in the best interest of the Company and its customers by facilitating  
22 construction and operation of an arsenic treatment facility. The Company was subject to  
23 sanctions and penalties by ADEQ for failure to resolve the arsenic treatment problem and  
24 believed that it was necessary to enter the lease agreements for the arsenic treatment  
25 facility. Further, neither the Commission nor any customers have suffered any harm as a

26 <sup>14</sup> See April 26, 2012 memorandum from J. Michlik.

1 result of this lease agreement with Nile River and, in fact, customers have benefitted from  
2 construction and operation of the arsenic treatment facility.

3 (b) Mr. Dougherty also claims that "Montezuma knowingly and willfully  
4 violated the January 4, 2012, March 12, 2012 and April 9, 2012 Procedural Orders in  
5 Docket W-2454A-08-0361, W-4254A-08-0362 by failing to docket a Capital Lease  
6 agreement with Financial Pacific Leasing, LLC for an Arsenic Treatment Facility signed  
7 on or about April 3, 2012. Instead, the Company docketed a purported March 16, 2012  
8 lease agreement between Ms. Patricia Olsen, personally, and Nile River leasing for the  
9 building. This action was undertaken to circumvent Commission approval of capital  
10 leases in violation of ARS S40-301, ARS S40-301, ARSS40-424 and ARS S40-425."<sup>15</sup>

11 The Company acknowledges the lease agreement with Financial Pacific is a capital  
12 lease and that the Company should have sought approval of that lease from the  
13 Commission. That lease agreement is for the arsenic treatment facility and was executed  
14 by the parties on May 2, 2012. The Company believes that the May 2, 2012 lease  
15 agreement with Financial Pacific was in the best interest of the Company and its  
16 customers by facilitating construction and operation of an arsenic treatment facility.  
17 Further, neither the Commission nor any customers have suffered any harm as a result of  
18 the Financial Pacific lease or the Company's failure to obtain Commission approval. The  
19 Company intended that the Commission would review the terms and conditions of that  
20 lease in its pending rate case. MRWC is a small water company and did not fully  
21 understand the need to seek prior Commission approval of a capital lease.

22 The Company also would note that the Financial Pacific lease was the only  
23 financing mechanism available to the Company for construction of the arsenic treatment  
24 plant. The Company originally intended to seek WIFA financing, but Mr. Dougherty filed  
25 objections with WIFA demanding that an environmental impact statement be undertaken

26 <sup>15</sup> Amended Complaint at 4-5, ¶ 27(B).

1 relating to the use of Well No. 4 and operation of the arsenic treatment plant. In turn,  
2 WIFA required a environmental study. The Company could not afford the necessary costs  
3 for an environmental study as required by WIFA. As a result, MRWC had no choice but  
4 to seek private financing for the arsenic treatment facility and the Financial Pacific lease  
5 was the only option available to it. Ultimately, the Financial Pacific lease agreement was  
6 in the best interest of the Company and its customers by facilitating construction and  
7 operation of an arsenic treatment facility.

8 (c) In the Amended Formal Complaint, Mr. Dougherty also alleges that the  
9 Company docketed a fraudulent lease agreement with Financial Pacific by docketing the  
10 May 2 lease agreement rather than the April 3 lease agreement.<sup>16</sup> The Company denies  
11 this allegation. This allegation is not an actionable complaint item. The Company and  
12 Financial Pacific executed lease agreements dated April 3, 2012 and May 2, 2012, but  
13 ultimately decided to use the May lease. There is absolutely nothing wrong with doing so  
14 and the Company did not violate any statutes, rules or laws. Further, Mr. Dougherty's  
15 suggestion that the Company committed fraud is silly and based on a misunderstanding of  
16 fraud under Arizona law. Neither the Commission nor any customers have suffered any  
17 harm as a result of the May 2, 2012 lease agreement with Financial Pacific. In fact,  
18 customers have benefitted from the lease agreement because it allowed the Company to  
19 construct and operate the arsenic treatment facility currently being used by the Company.

20 (d) In the Amended Formal Complaint, Mr. Dougherty next alleges that the  
21 "Company has willfully spent or encumbered Ratepayer funds in connection with the  
22 execution of the unauthorized Capital Leases for the Arsenic Treatment building and  
23 Arsenic treatment equipment entered into by the Company in violation of ARS S40-423,  
24 ARS S40-424 and ARS S40-425."<sup>17</sup> The Company denies this allegation for the reasons

25 <sup>16</sup> Amended Complaint at 4-5, ¶ 27(C).

26 <sup>17</sup> Amended Complaint at 5, ¶ 27(D).

1 set forth above. Further, the Company is a private water utility and ratepayers do not  
2 possess any ownership interest in any Company funds or property.<sup>18</sup>

3 (e) The Company denies the allegations contained in paragraph 27(E) of the  
4 Amended Formal Complaint. Ms. Olsen originally intended to enter into the Kevlor  
5 Contract personally, but the Company ultimately decided to enter the contract with  
6 Kevlor. That Kevlor contract did not require Commission approval and the Company did  
7 not violate any statutes relating to the Kevlor contract.

8 Ultimately, the Commission should dismiss Mr. Dougherty's Amended Formal  
9 Complaint and all allegations contained therein. MRWC is a small water utility with  
10 limited resources and any action against the Company would not benefit the Commission  
11 or customers. It also should be noted that Mr. Dougherty has not asked for any relief that  
12 can be granted by the Commission under these circumstances. In his original complaint  
13 dated August 23, 2011, Mr. Dougherty asked that the Commission "consider revoking  
14 Montezuma Rimrock's Certificate of Convenience and Necessity."<sup>19</sup> The Company is  
15 providing adequate water utility service to customers and Mr. Dougherty has not alleged,  
16 let alone shown, any reason for revoking the Company's CC&N. That's not to mention  
17 that Mr. Dougherty is not a customer of the Company.

18 On September 13, 2011, Mr. Dougherty submitted an additional pleading asking  
19 that "the Commission immediately remove Ms. Olsen as Company manager and install  
20 new management, on an interim basis."<sup>20</sup> Not only has Mr. Dougherty not alleged any  
21 basis for granting such relief, but any such remedy would be a taking subject to just  
22 compensation. And, again, Mr. Dougherty is not a customer of the Company. In that  
23 pleading, Mr. Dougherty also asked that the Commission "direct staff to conduct an

24 <sup>18</sup> *Bd. of Pub. Utility Comm'rs v. New York Tele. Co.*, 271 U.S. 23, 32 (1926).

25 <sup>19</sup> Original Complaint at 18.

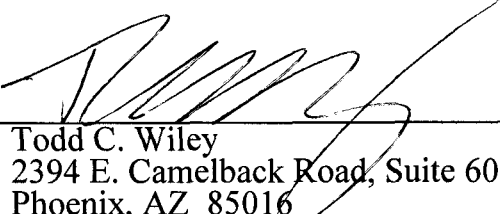
26 <sup>20</sup> Motion to Modify Formal Complaint with Additional Allegations and Two Additional Remedies dated September 13, 2011, at 2.

1 engineering and financial analysis related to extending a water service line from the  
2 Arizona Water Company, which already has sufficient water production capacity and an  
3 arsenic treatment facility, to MRWC's service area."<sup>21</sup> Under the facts of this case, the  
4 Commission does not have justification to take away the Company's service territory and  
5 give it to another water utility as suggested by Mr. Dougherty. Nor could the Commission  
6 lawfully do so under the facts of this case.

7 RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of March, 2013.

8 FENNEMORE CRAIG

9  
10  
11 By

  
Todd C. Wiley  
2394 E. Camelback Road, Suite 600  
Phoenix, AZ 85016  
Attorneys for Montezuma Rimrock Water  
Company, LLC.

12  
13  
14  
15 An original and 13 copies  
16 of the foregoing was filed  
17 this 18<sup>th</sup> day of March, 2013,  
18 with:

19 Docket Control  
20 Arizona Corporation Commission  
21 1200 West Washington Street  
22 Phoenix, Arizona 85007

23 A copy of the foregoing  
24 was hand delivered/mailed this  
25 19<sup>th</sup> day of March, 2013, to:

26 Sarah N. Harpring  
Administrative Law Judge  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix, Arizona 85007


<sup>21</sup> *Id.* at 2-3.

1 Janice Alward, Chief Counsel  
Legal Division  
2 Arizona Corporation Commission  
1200 W. Washington  
3 Phoenix, Arizona 85007

4 Steve Olea  
Utilities Division  
5 Arizona Corporation Commission  
1200 W. Washington  
6 Phoenix, Arizona 85007

7 Dan Pozefsky  
Michelle Wood  
8 RUCO  
1110 West Washington  
9 Suite 220  
Phoenix, Arizona 85007

10 John E. Dougherty, III  
11 P.O. Box 501  
Rimrock, Arizona 86335

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14 7981388.1

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